

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LORENA GODINEZ,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,  
et al.,

Defendants.

Case No. 2:17-cv-05072-FLA (RAOx)

**AMENDED JUDGMENT**

This action came for trial on November 9, 2021 in Courtroom 6B of the United States District Court for the Central District of California, the Honorable Fernando L. Aenlle-Rocha, United States District Judge, presiding. Plaintiff Lorena Godinez (“Plaintiff”) was represented at trial by Scot D. Wilson and Gregory Richard Mohrman. Defendant BMW of North America, LLC (“Defendant” or “BMW”) was represented at trial by Daniel R. Villegas and Andrew K. Stefatos.

A jury of eight (8) persons was regularly empaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the court and the cause was submitted to the jury with directions to return a verdict. The jury deliberated and thereafter returned to the court

1 its verdict, Dkts. 212, 213, unanimously finding the following:

- 2 1. Plaintiff Lorena Godinez bought a new 2010 BMW 328i SA distributed  
3 by BMW of North America, LLC (the “Subject Vehicle”);
- 4 2. BMW of North America, LLC gave Plaintiff a written warranty;
- 5 3. The 2010 BMW 328i SA had defect(s) covered by the warranty that  
6 substantially impaired the vehicle’s use, value, or safety to a reasonable  
7 buyer in Plaintiff’s situation;
- 8 4. BMW of North America, LLC or its authorized repair facility failed to  
9 repair the 2010 BMW 328i SA to match the written warranty after a  
10 reasonable number of opportunities to do so;
- 11 5. BMW of North America, LLC failed to promptly replace or repurchase  
12 the 2010 BMW 328i SA;
- 13 6. Regarding damages, the purchase price of the vehicle itself was \$6,000,  
14 incidental and consequential damages totaled \$8,400, and the value of  
15 use was \$377.80, resulting in total actual damages of \$14,022.20.
- 16 7. BMW of North America, LLC willfully failed to repurchase or replace  
17 the new 2010 BMW 328i SA; and
- 18 8. A civil penalty in the amount of \$28,044.40 was imposed.

19 On December 2, 2021, the court entered Judgment in Plaintiff’s favor in the  
20 total amount of \$42,066.60. Dkt. 219.

21 On December 28, 2021, Plaintiff filed a Motion for Judgment as a Matter of  
22 Law or, Alternatively, Amend the Judgment or for a New Partial Trial (“Motion”).  
23 Dkt. 224.

24 On December 12, 2022, the court granted in part Plaintiff’s Motion and  
25 CORRECTED the jury verdict as follows:

- 26 • Paragraph 6(a), the purchase price of the Subject Vehicle was corrected  
27 to: \$45,563.00
- 28 • Paragraph 6, Plaintiff’s value of use was corrected to: \$2,868.95.

1           • Paragraph 6, Plaintiff's total damages were corrected to: \$51,094.05.

2 Dkt. 249 at 2. The jury verdict was otherwise unchanged. *Id.*

3           In light of Plaintiff's representation that she did not return the Subject Vehicle  
 4 to BMW, but instead sold it as a trade-in while purchasing another vehicle, the court  
 5 Ordered Plaintiff to file a declaration stating the amount of money or other value she  
 6 received in exchange for trading in the vehicle. *Id.* at 10. Plaintiff responded on  
 7 December 23, 2022, and presented evidence demonstrating she sold the Subject  
 8 Vehicle for \$4,400.00.<sup>1</sup> Dkt. 250-2.

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 11           <sup>1</sup> Plaintiff contends the California Court of Appeal held in *Figueroa v. FCA US*  
 12 *LLC*, 84 Cal. App. 5th 708 (2022), that the Song-Beverly Act does not allow for  
 13 offsets for trade-in credit, and requests this court hold likewise. Dkt. 250 at 3-13. In  
 14 *Niedermeier v. FCA US LLC*, 56 Cal. App. 5th 1052, 1077 (2020), a separate panel of  
 15 the California Court of Appeal held that the damages awarded by a jury in a Song-  
 16 Beverly action must be reduced to reflect the value the plaintiff received for trading in  
 17 the vehicle at issue. This court agrees with *Niedermeier*, and finds Plaintiff's damages  
 18 must be reduced by the trade-in value she received when she sold the Subject Vehicle.

19           *Figueroa*, 84 Cal. App. 5th at 712, held that a jury award should not be reduced  
 20 to reflect the cash received by the buyer on the sale of the vehicle, because California  
 21 Civil Code § 1793.2(d)(2)(B) requires the manufacturer to "make restitution in an  
 22 amount equal to the actual price paid or payable by the buyer...." The Song-Beverly  
 23 Act, however, does not allow a buyer to retain a nonconforming vehicle after  
 24 obtaining restitution from the manufacturer. *See* Cal. Unif. Com. Code § 2702(2)(a)  
 25 ("After rejection any exercise of ownership by the buyer with respect to any  
 26 commercial unit is wrongful as against the seller[.]"). The court, therefore, construes  
 27 Plaintiff's conduct as acceptance of nonconforming goods as of the time she sold the  
 28 Subject Vehicle. Pursuant to California Civil Code § 1794(b)(2), "[w]here the buyer  
 has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall  
 apply...." California Uniform Commercial Code § 2714(2) states "[t]he measure of  
 damages for breach of warranty is the difference at the time and place of acceptance  
 between the value of the goods accepted and the value they would have had if they  
 had been as warranted, unless special circumstances show proximate damages of a  
 different amount." Accordingly, the court finds Plaintiff's damages must be reduced  
 by "the value of the goods accepted," in the amount of \$4,400. *See* Cal. Unif. Com.  
 Code § 2714(2).

1 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

2 1. The Judgment is AMENDED, such that Plaintiff shall recover from

3 Defendant BMW of North America, LLC, the amounts of:

4 a. \$45,563.00 for the purchase price of the vehicle and \$8,400.00 in

5 incidental and consequential damages, minus \$2,868.95 for the

6 mileage offset/use of the vehicle and \$4,400.00 for the sale and trade-

7 in value she received, for a total of \$46,694.05 in actual damages; and

8 b. \$28,044.40 in civil penalties.<sup>2</sup>

9 2. The total Amended Judgment is \$74,738.45, with interest thereon at the rate

10 of ten percent per annum from December 2, 2021, the date of entry of the

11 Judgment, until paid.

12 3. This court shall decide all issues involving attorney's fees, costs, expenses,

13 and prejudgment interest by post-judgment motions and order that an

14 amended judgment be prepared for execution.

16 Dated: January 23, 2023



17  
18 FERNANDO L. AENLLE-ROCHA  
19 United States District Judge  
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27 <sup>2</sup> Defendant's request for the court to reduce the civil penalty is DENIED, as the jury  
28 awarded that amount of civil penalties before Plaintiff accepted or traded-in the  
nonconforming vehicle.